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**Z-2508**  
**LARRY MATHEW**  
**R2 TO NBU**

**STAFF REPORT**  
**September 13, 2012**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, who is also the owner, is requesting a rezoning from R2 to NBU for a 0.19 acre lot at 901 South Street to legitimize a legally non-conforming use, a barber shop. The site is located at the southeast corner of South 9<sup>th</sup> and South Streets, Lafayette, Fairfield 28 (NW) 23-4.

**ZONING HISTORY AND AREA ZONING PATTERNS:**

The earliest zoning maps for this triangular-shaped property show General Business zoning. It remained GB until January 1999 when the rezoning of Historic Ninth Street Hill Neighborhood was approved by the Lafayette City Council (Z-1827) and the property's zoning changed to R2, making the existing commercial use non-conforming. At that time, the land associated with this site was owned by the railroad and its improvements (the building) had been owned by Michael Dilling for ten years. In 2002 Dilling purchased the land from the city after it was acquired from Norfolk Southern for the railroad relocation project. Later, in 2003, Dilling was unsuccessful in an attempt to rezone the site to NBU (Z-2124) after the case was denied by APC following three continuances and then tabled to time uncertain by the Lafayette City Council to allow the petitioner time to explore a possible sale of the site to the Historical Association. City Council minutes do not show the case ever coming off the table; the APC case file indicates that the request was denied through lack of council action and the R2 zoning remained.

In 2007, the current petitioner attempted to rezone the property to NBU and it received a favorable recommendation from the APC (Z-2341). This request was then scheduled to be heard by the Lafayette City Council, but was withdrawn when the Administrative Officer determined that the property still had non-conforming rights and the petitioner could operate his barber shop.

The property across 9<sup>th</sup> Street to the west, part of the same 1999 neighborhood rezone, was amended from R3 to NB to make the convenience store on it conforming. NBU zoned lots across the street to the north, and the CB zoned lots located to the northwest, were both part of the Downtown Neighborhood rezoning done in 1999 (Z-1858); land to the south and southeast is R2.

It should also be noted that the site is located within an historic district and as such is subject to additional restrictions and regulations under the review of the Historic

Preservation Commission. Any alterations to the existing building or new construction would require a Certificate of Appropriateness prior to issuance of an Improvement Location Permit.

#### **AREA LAND USE PATTERNS:**

The site is currently used as a barber shop by petitioner and has been since 2007. The small building (about 650 sq. ft.) is angled to face the intersection. Behind the building is a paved parking lot built by petitioner. This area of the parking lot was once owned by Norfolk Southern Railroad (right-of-way) and separated the subject land from the Fowler House Museum to the southeast.

Due south of the site is the Lafayette Art Museum; to the west across 9<sup>th</sup> Street is Village Pantry. Northwest across the intersection is a vacant office building (formerly Re/Max Real Estate) and north is a refurbished single-family home converted to a doctor's office.

#### **TRAFFIC AND TRANSPORTATION:**

Both South and 9<sup>th</sup> Streets are classified as urban primary arterials with a standard 60' setback, except in the NBU zone where the setbacks are 0' to encourage building placement nearer to the sidewalk. The paved parking lot has access to both South and 9<sup>th</sup> Street and supports 9 parking spaces. Only 3 spaces would be required for this use.

#### **ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

City sewer and water serve the site. A 40' to 50' utility easement containing a sewer line is located 8 to 10' behind the existing building in the former railroad right-of-way. Parking is permitted to be located in this area but no new construction or expansion of the existing building into the easement would be permitted. No bufferyard is required between NBU and R2 zoning. Maximum coverage by all buildings would be 60%.

#### **STAFF COMMENTS:**

In 1999 the 9<sup>th</sup> Street Hill Neighborhood rezone did three things to this site: 1.) it replaced the original GB zoning with R2; 2.) it gave a legally conforming, commercially constructed and used building non-conforming status; and 3.) made the site effectively un-buildable because of the required 60' building setbacks from both 9<sup>th</sup> and South Streets, all based on an assumption.

At the time the neighborhood was rezoned and again during the 2003 rezone attempt, it was believed with the removal of the railroad tracks, the triangle would become part of the Historical Association's land holdings adjacent to the southeast. Since the 1999 rezone this property has been purchased three times but never acquired by the Historical Association as predicted. Had this occurred, a new quasi-public land use and R2 zoning which matches that of the Fowler House and Museum of Art would have been appropriate. Instead, both the new and previous owners have purchased the property with the desire to maintain its commercial past. It is now clearer than ever that the Historical Association will never purchase this site.

Non-residential use of any property with residential zoning is severely limited. This particular site is further restricted by historic district regulations, 60' building setbacks from both 9<sup>th</sup> and South Streets and a 40-50' utility easement behind the building. This easement leaves the site with virtually no buildable area should anything happen to the current structure. Yet, residential use of this R2 zoned property in a building originally constructed as an office, on a site with no functional yard, is impractical. Ironically, the zoning granted to this site 13 years ago to secure its future now severely limits what the current owner can do. Specifically, financing for this non-conforming use becomes increasingly difficult. Additionally, no structural work could be done to this building if it is damaged. Petitioner has operated his barber shop for 5 years and has demonstrated that his business is a good neighbor, not only to the downtown area, but also to the St. Mary's and 9<sup>th</sup> Street Hill neighborhoods. Petitioner would like to have commercial zoning that the other three corners of this intersection enjoy and staff supports the request.

**STAFF RECOMMENDATION:**

Approval